

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIZABETH CURRAN-GROOME,

Plaintiff,

- against -

NOTICE OF REMOVAL

Docket No. 22 Civ 710

THE CITY OF NEW YORK, COMMISSIONER DERMOT SHEA, NEW YORK CITY POLICE DEPARTMENT; CHIEF OF DEPARTMENT TERENCE MONAHAN; INDIVIDUALLY AND AS A POLICE OFFICER, COMMANDER OF NYPD PATROL BOROUGH BRONX; P.O. KATHERINE TEJADA SHEILD # 6752, TAX ID # 953474, INDIVIDUALLY AND AS A POLICE OFFICER; JOHN AND JANE DOES # 1-2, INDIVIDUALLY AND AS POLICE OFFICERS,

Defendants.
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**TO: THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK**

Defendants THE CITY OF NEW YORK ("the City"), COMMISSIONER DERMOT SHEA, and THE CITY OF NEW YORK S/H/A/ NEW YORK CITY POLICE DEPARTMENT (collectively "Defendants"), by and through their attorney, GEORGIA M. PESTANA Corporation Counsel of the City of New York, respectfully shows this Court as follows:

1. On September 2, 2021, Plaintiff commenced this action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of the Bronx, under Index No. 817450/2021E naming THE CITY OF NEW YORK, COMMISSIONER DERMOT SHEA, NEW YORK CITY POLICE DEPARTMENT; CHIEF OF DEPARTMENT TERENCE MONAHAN; INDIVIDUALLY AND AS A POLICE OFFICER, COMMANDER OF NYPD PATROL BOROUGH BRONX; P.O. KATHERINE TEJADA SHEILD # 6752, TAX ID # 953474,

INDIVIDUALLY AND AS A POLICE OFFICER; JOHN AND JANE DOES # 1-2, INDIVIDUALLY AND AS POLICE OFFICERS¹ as defendants therein, and setting forth the claims for relief upon which this action is allegedly based. See Plaintiff's Summons and Complaint, annexed hereto as "**Exhibit A.**"

2. Upon information and belief, the City was served with the Summons and Verified Complaint on December 28, 2021 at 100 Church Street, New York, NY. Upon information and belief, COMMISSIONER DERMOT SHEA was served with a Summons and Verified Complaint in the above-entitled action on December 28, 2021. Upon information and belief, CHIEF OF DEPARTMENT TERENCE MONAHAN was served with a Summons and Verified Complaint in the above-entitled action on December 28, 2021. Upon information and belief, P.O. KATHERINE TEJADA SHEILD # 6752, TAX ID # 953474 was served with a Summons and Verified Complaint in the above-entitled action on December 28, 2021. Copies of the Affidavits of Service concerning service of the Summons and Verified Complaint on the Defendants are annexed collectively hereto as "**Exhibit B.**"

3. Plaintiff also identifies Assistant Chief Kenneth Lehr, Commander of Patrol Borough Bronx, (hereinafter "LEHR") in the summons as well as the "parties" section of Plaintiff's complaint. See Ex. A. However, Plaintiff does not individually name LEHR in the caption for this action or indicate a service address in the notice, and thus LEHR is not a proper party. Additionally, upon information and belief, and according to the NYSCEF docket, LEHR has not been served in this action or requested legal representation by this office.² Thus, even if

¹ Plaintiff has not yet identified JOHN AND JANE DOES #1-2 as named defendants in this matter.

² A review of New York State Courts Electronic Filing ("NYSCEF") system on January 27, 2022 at approximately 12:45PM revealed that plaintiff has not filed an affidavit of service, indicating that service was not properly effectuated upon LEHR.

this Court were to overlook Plaintiff's failure to properly name LEHR as a defendant, because LEHR has not been served, no court has acquired jurisdiction over LEHR and he should be disregarded for the purpose of removal proceedings, and the City should be allowed to exercise its right to removal.³

4. All individually named defendants who have been served in this action consent to its removal to federal court. Copies of Consent to Removal Forms are annexed hereto collectively as "**Exhibit C.**"

5. The above-captioned action is a civil action of which the United States District Court has original jurisdiction in that it includes causes of action which arise under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331. This action is therefore removable to the United States District Court without regard to the citizenship or residence of the parties.

6. Plaintiff brings causes of action pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, a the alleged deprivation of plaintiff's right to be secure in person and effects against unreasonable search and seizure, right to equal protection under the law, right not to be subjected to cruel and unusual punishment including excessive force, and right of freedom of speech and expression, as well as a federal claim for municipal liability, all in violation of the First, Fourth, and/or Fourteenth Amendments to the United States Constitution. See Ex. A. Plaintiff also asserts state law claims for false arrest, false imprisonment, assault, battery, excessive force, failure to intervene, and negligence. See Id.

³ "While there are some early decisions and expressions in the text-books to the effect that all the defendants, whether or not they have been served and brought within the jurisdiction of the court, must join in the petition for removal, the weight of authority, and we think the better reasoning, sustains the rule that defendants over whom the court has not acquired jurisdiction may be disregarded in removal proceedings, and that the defendants who have been summoned must of necessity be allowed to exercise their right of removal." Cnty. Bldg. Co. v. Md. Cas. Co., 8 F.2d 678, 678-79 (9th Cir. 1925).

7. This Notice of Removal is timely because it is being filed within thirty (30) days of receipt by the Defendants of the Summons and Verified Complaint on or about December 28, 2021. See 28 U.S.C. § 1446(b).

8. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending.

9. Defendants are unaware of any previous application for the relief requested herein.

WHEREFORE, Defendants respectfully request that the above-captioned action be removed from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York.

Dated: New York, New York
January 27, 2022

GEORGIA M. PESTANA.
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